

**From:** McElyea, Russell  
**To:** Mohr, Jason  
**Subject:** FW: advisory committee comment  
**Date:** Thursday, November 05, 2015 8:18:21 AM

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Jason

Here is another comment from an advisory committee member.

It would be helpful if I could have some time to discuss these comments at the next WPIC meeting.

Regards, Russ

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**From:** Thomas Sheehy [mailto:tomatty@mtintouch.net]  
**Sent:** Wednesday, November 04, 2015 2:00 PM  
**To:** McElyea, Russell  
**Cc:** Weiner, Jay; holly@franzdriscoll.com; jbloomquist@helenalaw.com; morlaw@qwestoffice.net; bill@galtranch.com; goffenaar@midrivers.com; Yates, Anne; Dubois, James (ENRD); Ritter, Douglas  
**Subject:** Re: advisory committee conf call

Judge McElyea,

Please accept my tardiness in commenting on the UM Report. I found it and the comments that have been made thought provoking and interesting. Clearly the report raises some large issues that will require considerable public and legislative comment and discussion before changes are made. Nonetheless the comments I have at this time are as follows:

I agree that the primary task of the Water Court needs to be to continue and complete the adjudication process as is as soon as reasonably possible.

The number one complaint I hear from water users is the cost they must incur to protect their water rights and resolve disputes over them. What ever changes are made to our system, we need to continually keep in mind that we need to make this process as inexpensive as possible for those involved. This is especially so for those with rights for small amounts of water. Too often the process is too costly to afford the justice that is deserved.

Modern computer technology, including the internet, email, and video conferencing has vastly changed the ability of rural Montanans to obtain and utilize information, and to conquer the vast distances in our state. While there are those who lag behind, today rural Montanans are becoming quite technologically sophisticated, especially when compared with their abilities of only a few years ago. This trend will surely continue. With it the need to have wide spread offices of our government agencies is quickly declining. Changes to our water dispute resolution structure need to made while keeping this trend in mind.

The Water Court should not go away when adjudication is complete. The Water Court has considerable expertise in matters involving water rights that should not be lost. In my view the water court should handle all water right controversies, not just the adjudication of the rights themselves. It is time consuming, expensive and very disheartening to water users to have to go from court to court. And unfortunately too many district courts are so overburdened with criminal and other matters that demand priority that they can't hear and

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resolve water disputes in a timely manner.

Although I know it would be a substantial departure from the present system, in my view having water rights disputes heard through an administrative process with a de novo appeal to the water court makes sense. Administrative procedures are less formal, and therefore typically less costly and more timely, than court procedures. And having an opportunity for a de novo appeal encourages litigants to not throw in the kitchen sink the first time around when pressing their case. In my opinion the result would be that those with disputes would tend more to represent themselves and would still not be very likely to appeal once a decision was reached by the administrative agency.

Of course anything that can be done to make records more complete and available is desirable. A "one stop shop" for water right information would be of benefit to everyone involved.

I have limited experience with water commissioners, but making the selection and training of commissioners, with local input, a function of DNRC in an effort to keep the judiciary independent of the executive branch seems reasonable.

Over all I applaud those who worked on the report for their efforts. These are issues that will take time to digest and resolve.

Tom

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On Oct 21, 2015, at 10:08 AM, McElyea, Russell <[RMcElyea@mt.gov](mailto:RMcElyea@mt.gov)> wrote:

The conf call will be Nov. 5 at 10:00. I will call those who can't make that date separately.

Meeting invite to follow.